Beth Abraham Health Services *and* 1199 National Health and Human Services Employees Union, SEIU, AFL–CIO. Case 2–CA–31830

November 8, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND HURTGEN

On January 18, 2000, Administrative Law Judge Steven Davis issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief, and the Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions as further discussed below, and to adopt the recommended Order.

The Union was certified as bargaining representative of a unit of employees at Schnurmacher Nursing Home (Schnurmacher).[1] The Union, seeking a contract for that unit, contacted a company called Beth Israel Medical Center (BIMC), in the belief that it owned Schnurmacher. BIMC referred the Union to the Respondent, stating that Schnurmacher is wholly managed by the Respondent; and further that BIMC had transferred ownership of Schnurmacher to Bethco Corporation, an affiliate of the Respondent. The Union thereafter commissioned research into that transfer, leading it to doubt whether a bona fide transfer had occurred, and making it unsure which entity in fact owned Schnurmacher. The Union thus requested information from the Respondent regarding the terms of the transfer transaction.[2]

The judge found that the Union satisfied its burden of establishing the relevance of the information it requested from the Respondent. We agree. The Union and the Respondent are parties to a collective-bargaining agreement, which provides that the "contract shall apply to any new or additional facilities of the [Respondent] and under its principal direction and control[.]" The record shows that the Union sought the requested information to verify that the ownership of Schnurmacher Nursing Home, where the Union had been certified as bargaining representative of a unit of employees, had in fact been transferred to the Respondent's affiliate Bethco from another company, Beth Israel Medical Center. This would enable the Union to determine whether to file a grievance against the Respondent, asserting that Schnurmacher was an additional facility of the Respondent subject to their collective-bargaining agreement. It is well settled that an employer is obligated to provide information which is relevant to a union's decision to file or process grievances. See, e.g., *Bell Telephone Laboratories*, 317 NLRB 802, 803 (1995), enfd. mem. 107 F.3d 862 (3d Cir. 1997); *Barnard Engineering Co.*, 282 NLRB 617, 619–620 (1987).

Further, the judge found, and we agree, for the reasons set forth by him, that the circumstances surrounding the Union's information request, including the fact the Respondent outright ignored the request and did not seek clarification, and the testimony at the hearing by Union Vice President Valdez regarding the objective for seeking the information, were sufficient to put the Respondent on notice of the relevant purpose for which the information was sought. See, e.g., *Allison Corp.*, 330 NLRB No. 190, slip op. at 5 fn. 23 (2000); *Brazos Electric Power Cooperative*, 241 NLRB 1016, 1018–1019 (1979), enfd. in relevant part 615 F.2d 1100 (5th Cir. 1980). The Respondent's reliance in its exceptions on *Rice Growers Assn.*, 312 NLRB 837, 838 (1993), is misplaced. The Board decision in that case that the respondent was not required to furnish the requested information was based on several factors not present here: the relevance of the information had not been established; the union at the hearing had not clarified its objective in seeking the information; and the respondent did not have a bargaining obligation to provide information because there were no unit employees due to a lawful plant closure. Thus, we reject the Respondent's argument that the Union's information request was not "sufficiently explicit so as to convey [its] objective[.]"

[1] *Schnurmacher Nursing Home*, 327 NLRB 253 (1998), enfd. in part 214 F.3d 260 (2d Cir. 2000).

[2] The Union's information request provided as follows:

> While the agreement calls for both BIMC and Bethco to finance certain operating expenses of the home and to bill the nursing home for these expenses on a monthly basis, it appears that BIMC continues to be responsible for the lion's share of these expenses. At the end of 1997, the balance due from BIMC to Schnurmacher was $452,422 and the balance due to BAHS was $425,000. If Bethco is now responsible for the day to day operations of Schnurmacher, three questions arise:
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> > Why did BIMC Holding agree to forgive $1.7 million of Schnurmacher's debt as part of the transaction and what did Bethco receive in return?
> >
> > Why does BIMC continue to be the sole party responsible for making up shortfalls in certain parts of Schnurmacher's Medicaid reimbursement?
> >
> > What is the nature of the consulting services provided to Schnurmacher by Bethco/BAHS (which amounted to $475,000 in 1997)?

Finally, the Respondent has not presented any other defense to the Union's request for relevant information.[3] Absent presentation of a valid defense, an employer has an obligation to furnish relevant information. *Woodland Clinic*, 331 NLRB No. 91, slip op. at 3 (2000). The Respondent's failure to furnish the Union with the information requested accordingly violated Section 8(a)(5) and (1) of the Act.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Beth Abraham Health Services, Bronx, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Susannah Ringel, Esq., for the General Counsel.
David Diamond (Proskauer Rose LLP), of New York, New York, for the Respondent.
Kent Hirozawa, Esq. (Gladstein, Reif & Megginniss, LLP), of New York, New York, for the Charging Party.

DECISION

STATEMENT OF THE CASE

STEVEN DAVIS, Administrative Law Judge. Based on a charge filed on November 16, 1998, by Local 1199 National Health and Human Services Employees Union, SEIU, AFL–CIO (the Union) a complaint was issued against Beth Abraham Health Services (Respondent) on April 29, 1999.

The complaint alleges essentially that Respondent failed and refused to supply certain requested information to the Union which was necessary for and relevant to the Union's performance of its collective-bargaining function. The Union asserts that the information sought was relevant to its collective-bargaining responsibilities toward the employees it represents at Respondent.

Respondent's answer denied the material allegations of the complaint, and asserted the affirmative defense that this matter should be deferred to the grievance and arbitration provisions of the collective-bargaining agreement between Respondent and the Union. On October 19, 1999, a hearing was held before me in New York, New York.

On the evidence presented in this proceeding and my observation of the demeanor of the witnesses and after consideration of the briefs filed by the General Counsel and Respondent, I make the following

[3] For example, to the extent that some of the information sought may pertain to Bethco Corporation, a holding company of which the Respondent is a subsidiary, the Respondent does not argue that such information is not in its possession or unavailable to it. See *Arch of West Virginia*, 304 NLRB 1089 fn. 1 (1991). Member Hurtgen additionally observes that the Respondent does not contend that the information is not available in document form, or that the information request was overly broad or vague.

FINDINGS OF FACT

I. JURISDICTION

Respondent, a New York corporation having its principal place of business at 612 Allerton Avenue, Bronx, New York, operates a nursing home and has been engaged in the business of providing health care services to various disabled and elderly individuals.

Annually, in the course of its business operations, Respondent derives gross revenues from those operations in excess of $250,000, and purchases and receives at its facility products, goods, and materials valued in excess of $5000 directly from points located outside New York State. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Respondent also admits and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Collective-Bargaining Agreement

Respondent operates a nursing home in the Bronx. It is bound to a collective-bargaining agreement between the Union and the Association of Voluntary Nursing Homes in which it is a member. The contract covers Respondent's employees in the following unit:

> All full-time and regular part-time service and maintenance employees, clerical and technical employees, licensed practical nurses, social workers, practical dieticians, occupational therapists, and pharmacists, employed by the Employer at 612 Allerton Avenue, Bronx, New York, excluding all other employees, including professional employees, guards and supervisors as defined in the Act.

The contract contains a clause which states that it is applicable to new or additional facilities of the employer:

> It is agreed that this contract shall apply and continue in full force and effect at any location to which the Employer may move. It is further agreed that this contract shall apply to any new or additional facilities of the Employer and under its principal direction and control within the five (5) boroughs of New York City, Nassau, Suffolk and Westchester Counties.

The contract, as extended in 1995 further provides, as relevant, that Respondent must give 7 days notice to the Union following the completion of arrangements for all expansions, acquisitions, sales, new facilities, and mergers within Westchester County.

B. Certification of the Union at Schnurmacher and Bargaining

Following a hearing, a Board-conducted election was held after which the Union was certified as the collective-bargaining representative for two units of employees at Schnurmacher Nursing Home in White Plains, Westchester County, New York.[1] The two units are essentially (1) professional employees and (2) licensed practical nurses, coordinators, and clerks.

[1] Case 34–RC–1509.

A few bargaining sessions were held between Schnurmacher and the Union but no agreement was reached. On August 7, 1998, the Union filed a charge, and on November 30, 1998, the Board granted the General Counsel's Motion for Summary Judgment against Schnurmacher which directed it to bargain with the Union. *Schnurmacher Nursing Home,* 327 NLRB 253 (1998).

Apparently the Union believed that Respondent and Beth Israel Medical Center were affiliated with Schnurmacher or possessed some authority to bargain on behalf of Schnurmacher.

On June 30, 1998,[2] the Union sent a letter to Respondent "requesting from management . . . dates to begin the negotiations at Schnurmacher Nursing Home."

In response, Nelson Valdez, the Union's vice president received a call from an administrator of Schnurmacher advising him that he should call Attorney James Frank. Valdez did so and on July 27, Frank wrote, advising Valdez that Schnurmacher would appeal the Board's certifications.

C. The Union Seeks Information Concerning the Ownership and Control of Schnurmacher

Valdez testified that he learned from public information that Schnurmacher was owned and operated by Beth Israel Medical Center (Beth Israel).

Accordingly, on August 5, Valdez sent a letter to Dr. Robert Newman, the chief executive officer of Beth Israel, stating that Beth Israel was not applying the terms of its collective-bargaining agreement with the Union to its employees at "Schnurmacher Nursing Home, A Division of Beth Israel—Bethco Nursing Home, Inc." as required by Beth Israel's contract with the Union. The letter requested that Beth Israel immediately apply the terms of its collective-bargaining agreement to the employees "at its Schnurmacher facility" in the units covered by the Board election and that it meet with the Union to discuss the implementation of the contract.

By letter dated August 11, Beth Israel official Gail Donovan responded that Beth Israel is not the employer of the employees at Schnurmacher, and is not involved in the day-to-day management of that facility. Donovan further stated that only 5 of Schnurmacher's 11 trustees are appointed by Beth Israel, and therefore the recognition clause in the collective-bargaining agreement between the Union and Beth Israel is not applicable.

On August 19, Dr. Matthew Fink, a Beth Israel official wrote to Valdez, advising that his letter of August 5 was forwarded to him by Dr. Newman. Dr. Fink advised that Schnurmacher "is wholly managed by Beth Abraham Health Services, and is responsible for all of the operations, including union issues and negotiations. The Beth Israel administration has no input whatsoever in the operations or issues at the nursing home."

By letter of August 26, Carmen Suardy, the corporate director of labor relations for Beth Israel wrote to the Union, enclosing a copy of Beth Israel's "legal opinion" concerning the Union's request that it apply the terms of its contract to Schnurmacher. The legal opinion, written by Attorney Kathryn Meyer, the senior vice president of Continuum Health Partners, Inc., stated:

> On March 4, 1996, Beth Israel Medical Center transferred a controlling interest in the Schnurmacher Nursing Home … to Bethco Corporation, an affiliate of Beth Abraham Hospital. Under the new structure, Bethco appoints 6 of the 11 members of the Board of Trustees of Schnurmacher and 3 of the 5 members of the Executive Committee. The agreement with Beth Abraham specifically provides that the Board of Trustees of Schnurmacher, which is controlled by Bethco, has "authority over all decisions relating to the operation of Schnurmacher, including all decisions with respect to staff."

On August 27, Valdez responded to Dr. Fink's letter of August 19. Valdez requested certain information concerning the identities of persons having an ownership interest in Schnurmacher, the organizational structure and information concerning persons holding an interest in Schnurmacher, Beth Israel Medical Center, Beth Israel Nursing Home, and Continuum Health Partners, Inc., and documents related to the management of Schnurmacher by Beth Abraham Health Services.

In response, Dr. Fink wrote to Valdez on September 8, advising that the structure of Schnurmacher was "significantly" changed in March 1996. He stated that Schnurmacher has two corporate members: "BIMC Holding Corporation (which is controlled by Beth Israel) but has a minority interest, and Bethco Corporation, an affiliate of Beth Abraham." He further stated that Bethco elects the majority of the Board of Trustees and the Executive Committee of Schnurmacher, and accordingly "Bethco . . . controls the operations of the facility." He attached copies of provisions of the bylaws of Schnurmacher, and an amendment to the certificate of incorporation which changed the corporate name to Beth Israel-Bethco Nursing Home, Inc.

It was stipulated that Bethco is a holding corporation, and that Respondent is a subsidiary of Bethco.

The amended bylaws of "Beth Israel Nursing Homes, Inc. d/b/a Schnurmacher Nursing Home of Beth Israel Medical Center" dated March 14, 1996, states that the name of the corporation is "Beth Israel-Bethco Nursing Home, Inc." The bylaws state that of the 11 trustees, 6 shall be elected by Bethco and 5 by Beth Israel Medical Center Holding Corporation (BIMCHC). The executive committee is comprised of five members, three of whom shall be Bethco trustees, and two of whom shall be BIMCHC trustees.

Valdez was aware that the same individual was in charge of human resources at Respondent and at Schnurmacher. In order to determine whether Respondent had complete control of or ownership of Schnurmacher, and in order to verify the accuracy of the information he had been given by Beth Israel, Valdez requested information from the Labor Research Association. That organization annually makes Freedom of Information requests to the New York State Department of Health for the cost reports filed by all hospitals and nursing homes doing business in New York State.

The Labor Research Association prepared and sent to the Union a memo dated September 17 which stated that Schnurmacher's 1997 cost report confirmed the information received by the Union from Beth Israel concerning the 1996 restructuring agreement, but also "raised some questions about what the

[2] All dates hereafter are in 1998 unless otherwise stated.

motivation for the deal could have been." The memo stated that for many years Beth Israel held the majority and controlling interest in Schnurmacher, but in March 1996, Beth Israel entered into an agreement with Beth Abraham Health Services to provide for the restructuring of the nursing home. Under the terms of the agreement, the bylaws of the nursing home were amended to provide for two corporate members, BIMCHC and Bethco.

The memo also noted that pursuant to the restructuring, Bethco assumed responsibility for the day-to-day management of the nursing home, and that Beth Israel and Beth Abraham Health Services finance certain operating expenses of the home and bill it for such expenses.

The memo stated that the transaction "appears to be a money loser for Beth Israel, as BIMC has forgiven one of Schnurmacher's major debts and now BIMC owes Schnurmacher money, while Beth Abraham appears to be making money on the deal. The documents did not mention anything about Beth Abraham paying BIMC for a share in Schnurmacher."

The memo further noted that under the terms of the agreement, Beth Israel is obligated to reimburse the nursing home for any shortfall in Medicaid reimbursement related to the building and land lease as well as for other obligations. At the end of 1997, the balance due from Beth Israel to Schnurmacher was $452,422 and the balance due to Beth Abraham Health Services was $425,000.

The memo stated that "with the April 1996 agreement, Beth Israel forgave $1.7 million in debt owed to it by Schnurmacher," and in 1997, Schnurmacher paid Beth Abraham Health Services $475,000 for "consulting" services.

D. The Request for Information

On October 2, Valdez drafted a letter, signed by Union President Dennis Rivera which was sent to Respondent. It stated that upon review of certain documentation related to the April 1996 change in Schnurmacher's ownership, "several questions remain unanswered, and we would . . . appreciate your assistance in their clarification so that we may proceed with bargaining for a first contract for the workers at the nursing home."

The letter states as follows:

> While the agreement calls for both BIMC and Bethco to finance certain operating expenses of the home and to bill the nursing home for these expenses on a monthly basis, it appears that BIMC continues to be responsible for the lion's share of these expenses. At the end of 1997, the balance due from BIMC to Schnurmacher was $452,422 and the balance due to BAHS was $425,000. If Bethco is now responsible for the day to day operations of Schnurmacher, three questions arise:
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> > Why did BIMC Holding agree to forgive $1.7 million of Schnurmacher's debt as part of the transaction and what did Bethco receive in return? Why does BIMC continue to be the sole party responsible for making up shortfalls in certain parts of Schnurmacher's Medicaid reimbursement?
> >
> > What is the nature of the consulting services provided to Schnurmacher by Bethco/BAHS (which amounted to $475,000 in 1997)?

Respondent admits that it did not furnish the Union with the information requested. The complaint alleges that the information sought in those three questions are necessary for, and relevant to, the Union's performance of its duties as the representative of Respondent's unit employees "specifically to administer and enforce the provisions of its collective-bargaining agreement."

The three questions relate to the information in the Labor Research memo. At hearing, Valdez explained the relevance of the requested information. He stated that knowing why Beth Israel forgave a $1.7 million Schnurmacher debt is relevant in determining whether Respondent merged, bought, or acquired Schnurmacher. Valdez sought answers to questions he had concerning how money provided for funding the nursing home was spent and who made such expenditures. Valdez sought to understand why, if Bethco or Respondent owned Schnurmacher and is responsible for providing services to that home, it billed Schnurmacher $475,000 for services that it was supposed to provide.

Valdez stated that he asked the above questions because he had no documentation regarding the change of ownership between Beth Israel and Respondent, and, for collective-bargaining purposes, he sought to establish the financial condition of Schnurmacher.[3] Thus, the information sought related, according to Valdez, to money being transferred to other companies, specifically Bethco and Respondent.

Valdez testified that the October 2 letter was an attempt to establish whether the Union could file a grievance against Beth Israel concerning its failure to apply the collective-bargaining agreement to Schnurmacher and also to determine whether the information provided—that there was a transfer of ownership between the two entities—in fact occurred. Valdez stated that although he was led to believe that ownership of Schnurmacher was transferred to Respondent, he was presented with no evidence that such was the case.

Valdez further stated that he did not request the information from Beth Israel because Beth Israel claimed that Respondent was responsible for the management of Schnurmacher. The intent of requesting the information was to engage in collective-bargaining with Schnurmacher.

On October 6, Geraldine Taylor, Respondent's executive vice president wrote to the Union in response to the October 2 letter. In the letter, Taylor spoke on behalf of Schnurmacher, advising that Schnurmacher objects to the Union's position that supervisors be included in the bargaining unit. Taylor advised that Schnurmacher intended to appeal the Board's decision concerning the unit.

E. Later Events

The Union requested the release from work of employees of Schnurmacher and Beth Israel so that they may attend the nego-

[3] Respondent asserts that the financial condition of Schnurmacher is irrelevant to the Union's concerns since in negotiations it did not raise the issue of inability to pay.

tiations between Beth Israel and the Union. Valdez stated that he believed that the negotiations would cover all the entities that were owned or controlled by the Beth Israel "network." Accordingly, the Union requested that employees be released for negotiations in every entity owned or controlled by Beth Israel. On October 19, the vice president for human resources at Beth Israel denied the request, advising that Schnurmacher is not a party to the negotiations and that Beth Israel is not the employer of Schnurmacher's employees.

On November 24, the president for human resources of Beth Israel advised the Union that Beth Israel would make arrangements for a meeting between Schnurmacher and the Union to discuss outstanding issues in their labor dispute.

The Union served upon Schnurmacher and Respondent a notice of an intention to engage in a strike at both facilities in late November. A flyer issued by the Union stated that Respondent, which controls Schnurmacher, had committed contract violations. The flyer refers to various alleged violations such as failing to schedule grievances and not responding to grievances and hearings, and refusing to select an arbitrator. The flyer also referred to certain safety issues. The flyer noted that the instant charge was filed after Respondent "refused to respond to 1199's request to meet or to provide information needed to investigate the violations."

F. Other Information Concerning the Ownership and Management of Schnurmacher

Following the close of the hearing, and pursuant to a procedure announced at the close of the hearing, the General Counsel submitted certain documents to me, with copies to Respondent. They consisted of: (a) the hearing testimony in the representation case concerning Schnurmacher of Matthew Stopler, the vice president for human resources of Respondent; (b) the Board's Decision and Direction of Elections in that case; and (c) proof of reliability or authenticity of underlying documents to the Labor Research Associates memo dated September 17. [4]

Such evidence establishes that Stopler is the vice president for human resources at Respondent and it is his responsibility to oversee human resources issues at Schnurmacher, including hiring, managing, evaluating, disciplining, and terminating employees. The administrator and manager of human resources at Schnurmacher have corporate oversight by Respondent.

Stopler testified that Respondent has a contractual relationship with Schnurmacher through Beth Israel pursuant to which Respondent operates Schnurmacher on a day-to-day basis and makes all operational decisions for Schnurmacher. Prior to 1996, Beth Israel managed Schnurmacher, but since March of that year, Respondent undertook such responsibilities.

The Board's Decision and Direction of Election found that Schnurmacher is managed by Respondent.

For the years 1996, 1997, and 1998, the chairman of Bethco, Edwin Stern, served simultaneously as the treasurer of Respondent, and the vice chairmen of both entities, Earl Collier, were the same. Similarly, the chairman of Respondent, Michael Potack, served as treasurer-secretary of Bethco during that period of time.

Documents filed with the New York State Health Department by Beth Israel Nursing Homes, Inc. on December 31, 1997, state that Beth Israel Nursing Homes, Inc., d/b/a Schnurmacher Nursing Home Beth Israel Medical Center is a not-for-profit membership corporation having two members, BIMC Holding Company, Inc. which is also the sole member of Beth Israel Medical Center and Bethco Corporation, a corporate entity related to Beth Abraham Health Services, Inc.

The documents further state that in November 1988, Beth Israel Medical Center acquired the operating rights to the facility later known as Schnurmacher. The facility began operations in November–1988 as Beth Israel Nursing Homes, Inc., Westchester Division–Beth Israel Medical Center and in 1992 was renamed Schnurmacher Nursing Home Beth Israel Medical Center.

In addition, according to the filed reports, on March 14, 1996, Beth Israel Medical Center entered into an agreement with Beth Abraham Health Services, Inc. to provide for the restructuring of the nursing home. Under the agreement, effective April 1, 1996, the bylaws of the nursing home were amended to provide for two corporate members: Beth Israel Medical Center Holding Company, Inc., and Bethco. The nursing home's board of trustees consists of 11 trustees, 6 of whom are elected by Bethco and 5 of whom are elected by Beth Israel Medical Center. Bethco assumed responsibility for the day-to-day management of the nursing home.

G. Respondent's Arguments

Respondent's answer asserted as an affirmative defense that this matter should be deferred to the grievance and arbitration provisions of the collective-bargaining agreement between Respondent and the Union. It is well settled that issues involving requests for information are not appropriate for deferral and the Board has refused to defer such cases. *American National Can Co.,* 293 NLRB 901, 904 (1989).

Respondent argues that the Union has not proven that it needed the information requested in its October 2 letter because the information sought was made without any reference to any grievance or potential grievance, or to any other of the union's collective-bargaining functions. However, the Board has held that it is irrelevant that there was no pending grievance when the request was made. *Barnard Engineering*, supra, at 620.

Respondent also argues that the October 2 letter only asked Respondent for "assistance" in helping it answer certain questions concerning the relationship between Beth Israel and Schnurmacher. The argument is that since the request did not contain any reference to a legitimate purpose for the information, Respondent was not advised that it had a duty to furnish the information. I do not agree. Although the Union phrased its request in a polite form, the letter clearly asked for the information sought. No particular terminology is required to make a demand for information, and Respondent could not doubt that it was being asked for information.

Respondent further contends that the information is irrelevant to the Union's function as the collective-bargaining representative of Respondent's employees. It asserts that the Union

[4] The General Counsel sent copies of all such documents to Respondent. No objection was received to General Counsel's motion to receive them in evidence and I do so.

is not entitled to, and does not need to know, the specifics of the interrelationship between Beth Israel, Respondent and Schnurmacher in order to fulfill its duties as the bargaining representative of Respondent's employees. It argues that Respondent has never denied that it had day-to-day operational responsibility for Schnurmacher, and therefore the information sought was irrelevant.

Analysis and Discussion

An employer has a statutory obligation to provide a union, on request, with relevant information the union needs for the proper performance of its duties as a collective-bargaining representative. *NLRB v. Acme Industrial Co*., 385 U.S. 432, 435–436 (1967). In determining whether an employer is obligated to supply particular information, the question is only whether there is a "probability that the desired information [is] relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." *Acme*, supra at 437.

When the union's request relates to information pertaining to employees in the unit which goes to the core of the employer-employee relationship, such information is presumptively relevant. The General Counsel argues that the information sought here is presumptively relevant inasmuch as the Union claims that if Respondent's collective-bargaining agreement is applied to Schnurmacher's employees, those employees may become part of the unit in Respondent's contract.

I reject that argument. The information sought must clearly refer to employees "in the unit," not those who may become members of the unit following additional proceedings. In addition, the data sought does not encompass such information which goes to the "core" of the employer-employee relationship such as wages, hours, and working conditions. The information sought relates to data sufficient to enable the Union to discover which entity owns or has a controlling interest in Schnurmacher. Accordingly, the information sought relates to matters occurring outside the unit.

As to such information, the union must establish the relevancy and necessity of its request for information. "A union has satisfied its burden when it demonstrates a reasonable belief supported by objective evidence for requesting the information." *Shoppers Food Warehouse*, 315 NLRB 258 (1994). The Supreme Court has characterized the standard to be applied in determining the union's right to information as a "broad discovery type standard" permitting the union access to a broad scope of information potentially useful for the purpose of effectuating the bargaining process. *Acme*, supra at 437 and fn. 6. The Board has adopted that discovery standard in "determining relevance in information requests, including those for which a special demonstration of relevance is needed, and potential or probable relevance is sufficient to give rise to an employer's obligation to provide information." *Shoppers Food*, supra, at 259. The burden of showing the relevance of nonunit information "is not an exceptionally heavy one." *Bently-Jost Electric Corp*., 282 NLRB 564, 567 (1987); *Pence Construction Corp*., 281 NLRB 322, 324 (1986).

A union satisfies its burden by demonstrating that when it made its request, it had a "reasonable belief supported by objective evidence for requesting the information." *E. J. Alrich Electrical Contractors*, 325 NLRB 1036, 1039 (1998); *Kranz Heating & Cooling*, 328 NLRB 401, 403 (1999).

The facts known to the Union at the time of its request for information were as follows:

> Valdez at first believed that Beth Israel owned Schnurmacher and demanded that it apply the terms of its contract to Schnurmacher. Then Valdez was informed that Schnurmacher was managed by Respondent which was responsible for its operations, and that Beth Israel was not involved at all in Schnurmacher's operations. Thereafter, Valdez was advised that Beth Israel transferred a controlling interest in Schnurmacher to Bethco, an affiliate of Respondent.

At that point, Valdez was apparently sufficiently concerned about the relationship of the companies involving Schnurmacher to inquire of Beth Israel the organizational structure and identities of individuals having an ownership interest in Schnurmacher, Beth Israel Medical Center, Beth Israel Nursing Home and Continuum Health Partners, and documents related to the management of Schnurmacher by Respondent.

Valdez was then advised that Bethco, an affiliate of Respondent, is the majority owner of Schnurmacher and controls the operation of the facility. He was further advised that BIMC Holding Corporation has a minority interest in Schnurmacher.

Valdez was then furnished a report by the Labor Research Association which raised certain questions which formed the basis of the Union's request for information at issue here.

Thus, the Association's report noted that when ownership of the nursing home was transferred in 1996 to Beth Israel Medical Center Holding Corporation and Bethco, Beth Israel Medical Center forgave a $1.7 million debt of Schnurmacher. Nevertheless, at the time of the 1997 report filed with the Department of Health, Beth Israel Medical Center was obligated to reimburse Schnurmacher for any shortfall in Medicaid reimbursement, and the Medical Center owes $452,422 to Schnurmacher, whereas Beth Abraham Health Services is due $425,000.

These facts caused the Union to ask why Beth Israel Medical Center forgave the $1.7 million debt and what Bethco received in return, and also why Beth Israel continued to be the sole party responsible to make up shortfalls in Schnurmacher's Medicaid reimbursement. Valdez sought to probe whether, notwithstanding that Beth Israel Medical Center purportedly gave up ownership and control of Schnurmacher, it nevertheless retained an interest or ownership in it by virtue of having received something of value in return for its forgiveness of a substantial debt.

Such retention of control or ownership might justify a grievance against Beth Israel seeking the application of the collective-bargaining agreement's after-acquired clause to Schnurmacher upon the theory that Schnurmacher was an additional facility of Beth Israel and under its principal direction and control. Such an approach had already been undertaken by the Union in its letter of August 5 to Beth Israel, demanding that it apply the contract to Schnurmacher. The Union was then rebuffed with the answer that Beth Israel did not own or control Schnurmacher.

The answers to the Union's inquiry might also justify a grievance against Respondent if the Union determined that

Schnurmacher was an additional facility of Respondent and under its principal direction and control.

Valdez also sought to learn why Beth Israel, which sold Schnurmacher, and purportedly having a minority interest in the nursing home, would agree to reimburse it for shortfalls in Medicaid reimbursement. *Kranz Heating & Cooling*, 328 NLRB 401, 402 (1998), where a union properly requested information concerning the relationship between joint employers or alter egos. The Union's last question asked for the nature of the consulting services provided to Schnurmacher by Bethco/BAHS of $475,000. That question raised the issue of why the purported owner of Schnurmacher billed it for services provided to it. According to Valdez, he believed that it was unusual for an owner of a facility to charge itself for consulting services. These inquiries call into question the issue of whether Respondent was, in fact, the owner of the facility.

Notwithstanding that at the time of the Union's October 2 letter, public documents confirmed that Bethco and Respondent owned the facility, each of the three questions asked by the Union was directed to a fuller understanding of the nature of the ownership and clearly related to the issue of whether Schnurmacher was a new or additional facility, and which entity had principal direction and control of Schnurmacher. The answers to that inquiry would enable the Union to properly consider whether and against which entity to file a grievance under the after-acquired facility clause of the two contracts.

The Union made clear its intent to have some entity with which it had a collective-bargaining agreement apply that contract to Schnurmacher. First, the Union through its August 5 letter demanded that Beth Israel do so. Then when the Union was informed that Beth Israel was no longer the owner of Schnurmacher, it was given information that Respondent was the owner and then sought to make the same demand of Respondent.

Contrary to Respondent, I find that the Union's October 2 letter set forth the basis for its request for the information. The Union stated that it had several questions relating to the 1996 change in Schnurmacher's ownership, and requested answers so that it "may proceed with bargaining for a first contract for the workers at the nursing home."

Thus, following the Union's certification as the collective-bargaining representative of certain Schnurmacher's employees, the Union obtained information from the Labor Research Association's review of Schnurmacher's public reports. The information raised certain questions concerning whether Beth Israel retained ownership or control of Schnurmacher. The Union thus had a reasonable belief supported by objective evidence for requesting explanations and answers to its inquiry.

The Union's October 2 request sought information concerning the retention of control of Schnurmacher by Respondent or Beth Israel following its sale. The request specifically raised the issue of the continued responsibility of Beth Israel for Schnurmacher's expenses and its forgiveness of a substantial loan notwithstanding its sale of the facility. Accordingly, the Union sought to explore and obtain answers to the question of the continued relationship of Beth Israel to Schnurmacher. "The Union was entitled to the requested information to determine the nature of the relationship between the companies." *Brisco Sheet Metal*, 307 NLRB 361 (1992). In *National Broadcasting Co.*, 318 1166, 1168–1169 (1995), the Board found that the union was entitled to information concerning the extent to which the General Electric Company controlled the operations of the respondent, and the arrangements between it, respondent and other companies.

The guiding consideration in determining the validity of the Union's request is whether there is a "probability" that the desired information is relevant and that it would be of use to the Union in carrying out its statutory duties and responsibilities. *Acme,* supra. The information sought need not be determinative of the issue of which entity owns, or has principal direction or control of Schnurmacher. The information sought here is clearly potentially useful and has probable relevance in the Union's attempt to discover, for itself, the nature of the relationship between Beth Israel and Respondent as it relates to Schnurmacher. Such an inquiry is clearly related to the Union's duties and responsibilities toward the unit employees of Beth Israel, Respondent and Schnurmacher inasmuch as the facts revealed by the answers to the questions may indicate that a grievance should be filed under the after-acquired clause of the contract with Beth Israel or Respondent.

I accordingly find that the Union requested relevant information to aid it in its determination as to whether to file a grievance under the after-acquired clause of its collective-bargaining agreement with either Beth Israel or Respondent.

Although there is no evidence to support a finding that the Union's October 2 request could have reasonably alerted Respondent to the fact that the Union sought this information to assert a claim that the after-acquired clause of their contract would be applied to Schnurmacher, nevertheless the letter specifically stated that the information related to a contract for the Schnurmacher employees. In addition, "the adequacy of the requests to apprise the Respondent of the relevancy of the information must be judged in the light of the entire pattern of facts available to the Respondent" including the Union's hearing testimony as to the reasons for the requests inasmuch as the Union's requests for the information is still outstanding. Respondent's continuing failure to respond cannot be attributed to inadequacy of the communications. *Ohio Power Co.*, 216 NLRB 987, 991 fn. 9 (1975); *Barnard Engineering Co.*, 282 NLRB 617, 620 (1987). Moreover, Respondent's failure to respond to the request had nothing to do with the alleged inadequacy of the request. Respondent simply ignored the request. The record does not support a finding that Respondent would have complied with the request had it been given the specific reasons for the information sought. *Westwood Import Co.*, 251 NLRB 1213, 1227 (1980). Furthermore, "an employer may not simply refuse to comply with an ambiguous and/or overbroad information request, but must request clarification and/or comply with the request to the extent it encompasses necessary and relevant information." *National Electrical Contractors Assn.*, 313 NLRB 770, 771 (1994).

Respondent argues that there is no dispute that it has complete control over Schnurmacher's operations, the Union was so informed at the representation hearing and even by its own research, and therefore the information requested is irrelevant and unnecessary. However, the Union was not required to ac-

cept Respondent's assertion that it had complete control over the management of Schnurmacher. It was "entitled to make its own investigation and evaluation of the merits of the claim." *Barnard*, supra at 621. The Union was entitled to "verify whether its belief was accurate." *E. J. Alrich*, supra at 1036.

Respondent contends that the Union is not entitled to financial information in the absence of a claim that it is unable to pay requested wages or benefits. However, "the Union is not seeking Respondent's records—merely answers." *Bentley-Jost*, supra at 569.

Contrary to Respondent, I do not believe that the statements in Valdez' November 1998 affidavit defeats the Union's claim for the information. The affidavit was submitted in opposition to Respondent's application for an injunction prohibiting the sympathy strike against Respondent, and accordingly his statements related to that lawsuit only. The affidavit stated that the Union did not claim that Respondent has a contractual obligation to force Schnurmacher to negotiate a contract with the Union, and that "there is no provision in the 1199-BAHS collective-bargaining agreement relating to the dispute at" Schnurmacher. As set forth in the affidavit, Valdez' statement was in response to Respondent's argument that the strike was not a sympathy strike because of the Union's claim that Respondent has a contractual obligation to require Schnurmacher to bargain with the Union. The affidavit related to the issue of whether the Union was properly engaged in a sympathy strike, and not which entity has principal direction and control of Schnurmacher as is involved here.

CONCLUSIONS OF LAW

1. Respondent, Beth Abraham Health Services, is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local 1199 National Health and Human Services Employees Union, SEIU, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. At all times material, the Union has been and continues to be the exclusive collective-bargaining representative of Respondent's employees in the following unit:

> All full-time and regular part-time service and maintenance employees, clerical and technical employees, licensed practical nurses, social workers, practical dieticians, occupational therapists, and pharmacists, employed by the Employer at 612 Allerton Avenue, Bronx, New York, excluding all other employees, including professional employees, guards and supervisors as defined in the Act.

4. By failing and refusing to respond to and furnish the Union with the information requested in its letter of October 2, 1998, Respondent violated Section 8(a)(1) and (5) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. I shall recommend that Respondent be ordered to provide the Union with the information that it requested by letter dated October 2, 1998.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondent, Beth Abraham Health Services, Bronx, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain in good faith with Local 1199 National Health and Human Services Employees Union, SEIU, AFL–CIO, by failing and refusing to furnish it with information that was requested by letter dated October 2, 1998, which information is relevant and necessary to administer the collective-bargaining agreement between Respondent and the Union.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish to the Union the information it requested by letter dated October 2, 1998.

(b) Within 14 days after service by the Region, post at its facility in the Bronx, New York, copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 6, 1998.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES
GOVERNMENT

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[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[6] If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain in good faith with 1199 National Health and Human Services Employees Union, SEIU, AFL–CIO, by failing and refusing to furnish it with information that was requested by letter dated October 2, 1998, which information is relevant and necessary to administer the collective-bargaining agreement between us and the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL furnish to the Union the information it requested by letter dated October 2, 1998.

BETH ABRAHAM HEALTH SERVICES